

support, an integral element of USF support, for only half the cost of provisioning telecommunications services in its high-cost area. It would be forced to recoup the remainder from other sources, including its customers, or significantly curtail the investment necessary to build out its service territory. Either result would undermine the Communications Act's universal service principles, both as to the availability of quality services on par with services available in urban areas, as well as to the availability of such services at rates that are "*reasonably comparable*" to the rates for such services in urban areas.⁶²

In the instant circumstances, SVS is simply an insufficient remedy. Sacred Wind cannot provide services at reasonably comparable rates to the Navajo Nation while receiving only half the amount of USF support to which it would otherwise be entitled. This would be a difficult task if the existing lines and penetration rates were reasonably comparable to that of rest of the country, and the investments to be made were related solely to an upgrade of existing infrastructure. Here, however, as discussed above, Sacred Wind is acquiring 2,300 bare copper lines, without *any* associated switching equipment and central office operations. Sacred Wind will be constructing from the ground up an FWLL network and associated IP switching platform, central office and all operational systems. In addition, critically important here, Sacred Wind will also be increasing penetration rates from roughly 28 to 90 percent, increasing the number of access lines in its service territory from approximately 2,300 lines to well over 9,000 lines. Plainly, this is a situation that the SVS mechanism was not intended to address, and where application of the SVS would result in the complete abandonment of the principles underlying universal service.

⁶² 47 U.S.C. § 254(b)(3) (emphasis added).

The residents of this rural, high-cost and insular area have long waited for universal service. The Commission must end their wait and find that the special circumstances presented here demand a waiver of Section 54.305.

V. THE COMMISSION SHOULD WAIVE SECTIONS 36.611 AND 36.612 OF ITS RULES TO ENABLE SACRED WIND IMMEDIATELY TO RECEIVE USF PAYMENTS.

Sacred Wind respectfully requests a waiver of Sections 36.611 and 36.612 of the Commission's rules to enable it to receive USF payments immediately upon commencement of operations. Sacred Wind also requests that the Commission direct USAC to disburse these payments consistent with this request.

Under Sections 36.611 and 36.612 of the Commission's rules, high-cost loop support is determined based on historical cost data. Specifically, under Section 36.611, cost data are submitted seven months after the end of a calendar year. Because NECA requires time to analyze these data and make the appropriate nationwide calculations of support, carriers generally do not receive high-cost loop support until the beginning of the second calendar year after the costs are incurred.⁶³ As a newly-established carrier operating in an entirely new study area, Sacred Wind will not have the historical data necessary to compute high-cost loop support, and thus will have to wait until at least 2007 to receive such funding (though the quarterly update provision of Section 36.612 could reduce this period to some extent).⁶⁴ During this time, Sacred Wind would be compelled to look to its rural, low-income local exchange customers for cost

⁶³ See 47 C.F.R. §§ 36.611, 36.612; see also *MATI II* at ¶ 23.

⁶⁴ The data submission and filing requirement of Part 36 of the Commission's rules operate to postpone the eligibility of a newly established LEC for receipt of USF support until its third year of operation. See, e.g., *Skyline I* at ¶ 19; *MATI II* at ¶ 23. In comments on the *Tribal Lands FNPRM*, NECA and the United States Telecom Association ("USTA") explained the adverse effect of the "two-year lag rule." NECA and USTA correctly recognized that carriers seeking to provide telephone service to previously unserved or underserved areas do not have historical cost data for USF support calculations. They stated, "[s]uch carriers are ... required to wait for up to two years following the time that they incur costs in serving these areas before they can receive high cost support." *Comments of NECA and USTA* at 8.

recovery of amounts that otherwise should be recovered through the universal service program in a manner consistent with established Commission policy and practice. Such a result would be antithetical to Commission precedent and the goals of the universal service program.

In addition, failure to grant Sacred Wind's request would place undue upward pressure on local rates, leading to rates above the levels currently envisioned. Sacred Wind's only other option would be to forego the provision of necessary and improved telecommunications services to the Navajo community. Higher local rates would discourage subscription to local telephone service and jeopardize provision of such services in unserved and underserved remote areas, a result entirely inconsistent with the Commission's goal of "promoting the provision of services at reasonable rates."⁶⁵

The primary goal of the USF program is to promote the nationwide availability of reasonably priced telephone services by providing "direct assistance to the areas where it is most needed to ensure that telephone rates remain affordable for the average subscriber."⁶⁶ In this instance, adherence to the Commission's rules will frustrate, rather than further, this goal by denying universal service payments to a new company offering local telephone service to rural, low-income, and previously unserved or underserved areas. The Commission has recognized that "because companies seeking to serve previously unserved areas make large capital investments to initiate services without immediate support, their company-specific rates would likely be extremely high."⁶⁷ The Commission has granted waivers of Sections 36.611 and 36.612 in similar situations, "primarily to accelerate the provision of support to cover costs incurred by

⁶⁵ *MATI II* at ¶ 26.

⁶⁶ *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision and Order, CC Docket Nos. 78-72, 80-286, ¶ 58 (rel. Nov. 23, 1984).

⁶⁷ *MATI II* at ¶ 26.

new carriers initiating or extending service in predominantly unserved areas.”⁶⁸ Waiver of these sections will allow Sacred Wind to recoup immediately the substantial investments made during its initial years of operation, and thus enable it to extend reasonably-priced telecommunications services to residential customers in rural, remote and high-cost areas of the Navajo Nation, without the imposition of line extension charges.

Waiver of Sections 36.611 and 36.612 would also be consistent with the Commission’s “obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes to encourage tribal sovereignty and self-governance, and to ensure a standard of livability for members of Indian tribes on tribal lands.”⁶⁹ As the Commission stated in *MATI*:

The grant of this waiver will enhance the Mescalero Apache tribe’s access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, and thereby increase the tribe’s access to education, commerce, government, and public services. These measures will also help bridge the physical distances between those living on the Reservation and the emergency, medical, employment, and other services that they may need to improve the standard of living on the Reservation.⁷⁰

The instant case is no different. Waiver of Sections 36.611 and 36.612 will enable Sacred Wind to immediately begin increasing access to telecommunications services on Navajo lands consistent with the Commission’s statutory goal of preserving and advancing universal service. Such a waiver is also consistent with the Commission’s “mandate to ensure that consumers in all regions of the United States, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services.”⁷¹

⁶⁸ *Adak* at ¶ 9.

⁶⁹ *MATI II* at ¶ 29.

⁷⁰ *Id.*

⁷¹ *Id.* at ¶ 28.

Accordingly, Sacred Wind requests a directive to USAC to calculate and remit USF support based on Sacred Wind's current and projected, rather than historical, costs. Sacred Wind seeks this treatment until such time as Sacred Wind obtains historical cost data upon which USF recovery can be calculated pursuant to Sections 36.611 and 36.612 of the Commission's rules.⁷²

VI. THE COMMISSION SHOULD WAIVE SECTIONS 54.301(b) AND 54.903(a)(3) OF THE COMMISSION'S RULES FOR LSS AND ICLS.

For reasons stated above with regard to the waiver of the Commission's rules for high-cost loop support, good cause exists to grant Sacred Wind waivers of Sections 54.301(b) and 54.903(a)(3) of the Commission's rules to allow Sacred Wind immediately to be eligible to receive support for LSS and ICLS. Accordingly, Sacred Wind asks the Commission to waive the deadlines for filing information with USAC relating to LSS and ICLS as required under Sections 54.301(b) and 54.903(a)(3) of the Commission's rules, respectively.

Allowing Sacred Wind to be eligible in a prompt manner to receive high-cost support, will avoid the possibility of increases to Sacred Wind's local service rates and will encourage local telephone subscribership in a low-income, rural area, consistent with the goals of universal service.⁷³ For these reasons, Sacred Wind requests a waiver of the filing deadlines set forth in Sections 54.301(b) and 54.903(a) of the Commission's rules and a waiver of the October 1 and/or January 1 state USF certification deadlines set forth in Section 54.314(d), as necessary, to

⁷² In the interim, Sacred Wind proposes to compute USF based on the estimated actual costs per access line, and intends to true-up on an annual basis with USAC to reconcile any difference between estimated and actual costs incurred.

⁷³ Recently, several other carriers have been granted a waiver of these rules, on the Commission's own motion, to allow them to "begin receiving high cost loop, local switching, and interstate common line support on the dates [they] would otherwise be entitled to receive such support, absent the waived requirements." See, e.g., *Matter of Allband Communications Cooperative, Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules*, Order, WC Docket No. 05-174, DA 05-2268, ¶ 8 (2005) ("Allband"); see also *Matter of M&L Enterprises, Inc., d/b/a Skyline Telephone Co., Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, Order, 20 FCC Rcd 653 (2005) ("Skyline IP").

allow Sacred Wind to receive LSS and ICLS for the second (or third) quarter 2006, depending on when Sacred Wind begins service.

VII. THE COMMISSION SHOULD WAIVE THE STATE CERTIFICATION FILING REQUIREMENTS IN SECTION 54.314(d) OF ITS RULES.

In order for eligible telecommunications carriers (“ETCs”) to receive USF support, the Commission’s rules require that, with respect to each carrier, the relevant state commission must certify to the Commission and USAC that “all federal high-cost support provided to such carriers within that state will be used only for the provision, maintenance, and upgrading of facilities for which the support was intended.”⁷⁴ Carriers certified by October 1 may receive USF support for all of the succeeding year.⁷⁵ Carriers certified after October 1, but no later than January 1, may receive USF support for only the second, third, and fourth quarters of the year.⁷⁶ Similarly, if certification is provided after January 1, but no later than April 1, USF support is available for the third and fourth quarters of the year. And, if certification comes after April 1, but no later than July 1, support is available for only the fourth quarter.⁷⁷

Sacred Wind seeks to obtain USF support beginning in the second or third quarter of 2006. Accordingly, Sacred Wind requests a waiver of the state certification filing requirements set forth in Section 54.314(d) to allow Sacred Wind to be immediately eligible to receive high-cost support.

⁷⁴ 47 C.F.R. § 54.314(a).

⁷⁵ 47 C.F.R. § 54.314(d)(1).

⁷⁶ 47 C.F.R. § 54.314(d)(2).

⁷⁷ 47 C.F.R. § 54.314(d)(3)-(4).

VIII. THE COMMISSION SHOULD WAIVE SECTIONS 69.2(hh), 69.3(e)(6), and 69.3(e)(11) OF ITS RULES TO ALLOW SACRED WIND TO PARTICIPATE IN NECA POOLS AND TARIFFS.

In order to be a member of NECA and participate in NECA pools and tariffs, a carrier must be a "telephone company," as defined in Part 69 of the Commission's rules.⁷⁸ Section 69.2(hh) of the Commission's rules defines a "telephone company" as an ILEC as defined in Section 251(h)(1) of the Act. Section 251(h)(1) defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act (or a successor or assign of such a carrier).⁷⁹ As noted above, the Commission should find that Sacred Wind has not acquired an exchange from Qwest, and in so finding may also conclude that Sacred Wind, therefore, is not a successor or assign of Qwest for purposes of Section 251(h)(1).⁸⁰ Should the Commission agree and thus find that it does not meet the statutory definition of a "telephone company," Sacred Wind requests a waiver of this definition.⁸¹

Participation in NECA will allow Sacred Wind to avoid the costs of filing and maintaining its own company-specific interstate tariffs. Sacred Wind intends to provide service, initially, to approximately 2,300 access lines. With such few customers, Sacred Wind would incur disproportionately excessive administrative costs to prepare and maintain company-specific tariffs. In addition, because of the high cost of providing service to a relatively small number of customers in Sacred Wind's remote location, Sacred Wind's company-specific access charges will likely be extremely high. Accordingly, it is in the public interest to grant the

⁷⁸ In addition, Section 36.611 of the Commission's rules applies only to ILECs. 47 C.F.R. § 36.611.

⁷⁹ 47 U.S.C. § 251(h)(1).

⁸⁰ See *supra* Section IV.A.

⁸¹ Other carriers not qualifying as ILECs under the statutory definition, yet providing service in unserved and underserved rural areas, have been granted waivers of Sections 69.2(hh) and 69.3(e)(6) for the purpose of joining NECA and effectuating the goals of the USF program. See, e.g., *Adak* at ¶¶ 14-16; *Allband* at ¶¶ 6, 7.

requested waiver to allow Sacred Wind and its customers to benefit from the cost savings and lower access charges available through NECA participation.

To similarly assist Sacred Wind's participation in NECA, and to facilitate the public interest benefits such participation will provide to Sacred Wind and its customers, Sacred Wind also requests a waiver of Section 69.3(e)(6) of the Commission's rules, as necessary. Section 69.3(e)(6) mandates that a new carrier like Sacred Wind filing a tariff under Section 69.3(e) must notify NECA not later than March 1 (of the year the tariff becomes effective) that it intends to file such a tariff.⁸² Waiver of this rule is thus essential to Sacred Wind's participation in the NECA pool. Without this waiver, Sacred Wind will miss a year of the support that is attendant to participation in NECA.

In addition, Sacred Wind requests a waiver of Section 69.3(e)(11) of the Commission's rules, to the extent necessary, to allow Sacred Wind to utilize NECA as its tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition.⁸³ Thus, Section 69.3(e)(11) may preclude Sacred Wind from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of the acquisition transaction. This would require Sacred Wind to file interstate tariffs, and assume the cost and administrative burden associated with that process. NECA was established, in part, to ensure that the excessive burdens associated with such tariffing would not be imposed upon small LECs such as Sacred Wind.⁸⁴ Moreover, the inclusion of Sacred Wind's

⁸² 47 C.F.R. § 69.3(e)(6).

⁸³ 47 C.F.R. § 69.3(e)(11).

⁸⁴ See 47 C.F.R. § 69.603.

small number of acquired access lines in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation.⁸⁵ In light of the fact that Sacred Wind is a very small carrier, and the administrative and financial burdens that could result in the absence of a waiver are great, Sacred Wind requests a waiver of Section 69.3(e)(11), to the extent necessary, for it to include its newly-acquired access lines in the NECA pools.⁸⁶

For the foregoing reasons, Sacred Wind requests that the Commission waive the definition of "telephone company" in Section 69.2(hh) of its rules, to the extent necessary; waive the ILEC requirements in Sections 36.611, 54.301, and 54.303; waive Section 69.3(e)(6) to allow Sacred Wind to be able to promptly participate in NECA pools and tariffs and receive high-cost universal service support; and waive Section 69.3(e)(11) to allow Sacred Wind to utilize NECA as its tariff pool administrator.

IX. THE COMMISSION SHOULD WAIVE ITS STAY OF THE PROVISION OF ENHANCED LIFELINE AND LINK UP SUPPORT TO CUSTOMERS ON NEAR-TRIBAL LANDS.

Sacred Wind respectfully requests that the Commission waive its stay of the provision of Tier 4 Lifeline and Link Up support⁸⁷ to eligible residents of near-Tribal lands. The Commission's Lifeline and Link Up programs were designed to ensure that telephone service is affordable to low-income consumers by providing universal service support to reduce the price consumers pay for basic telephone service and initial telephone installation.⁸⁸ Under the Commission's rules, there are four tiers of federal Lifeline support. Relevant to the instant

⁸⁵ See, e.g., *Saddleback Communications and Qwest Corp.*, Order, 16 FCC Rcd 21159, 21166 (2001) (Commission granted waiver of Section 69.3(e)(11) for the acquisition of approximately 2,700 access lines).

⁸⁶ Sacred Wind will request NECA to provide a statement for the record that it does not object to the addition of these lines to the pool.

⁸⁷ Tier 4 low-income support is commonly known as "Enhanced Lifeline and Link Up" or "Tribal Lifeline and Link Up."

⁸⁸ See *Smith Bagley* at ¶ 2.

discussion is Tier 4, which provides eligible residents of Tribal lands, as defined in Section 54.400(e) of the Commission's rules, Enhanced Lifeline and Link Up support.⁸⁹

Section 54.400(e) defines an eligible resident of Tribal lands as "a qualifying low-income consumer living on or near a reservation."⁹⁰ The term "reservation" means "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, and Indian allotments."⁹¹ The term "near reservation" is described as lands adjacent or contiguous to reservations and that generally have been considered Tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes.⁹²

In 2000, the Commission stayed implementation of Enhanced Lifeline and Link Up support to otherwise qualifying low-income residents living near, as opposed to on, a reservation.⁹³ The Commission concluded that the term "near reservation" as defined by the Bureau of Indian Affairs ("BIA") may cast too wide a net, potentially including geographic areas that might not warrant the targeting of Enhanced Lifeline and Link Up support to reservations – benefits that were typically reserved to areas of geographic isolation, high rates of poverty, and

⁸⁹ 47 C.F.R. § 54.403(a)(4).

⁹⁰ 47 C.F.R. § 54.400(e). For purposes of identifying the geographic areas within which Enhanced Lifeline and Link Up should apply, the Commission determined that the term "Tribal lands" should include the United States Department of Interior Bureau of Indian Affairs ("BIA") definitions of "reservation" and "near reservation" contained in Sections 20.1(v) and 20.1(r) of the BIA regulations, respectively. *See Twelfth Report and Order*, citing 25 C.F.R. §§ 20.1(r) and 20.1(v). *See also, Federal-State Joint Board on Universal Service*, Twenty-Fifth Order on Reconsideration, Report and Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958 (2003) ("*Twenty-Fifth Reconsideration Order*") (confirming that the Commission would continue to use the BIA definition adopted in the Twelfth Report and Order).

⁹¹ 25 C.F.R. § 20.1(v).

⁹² 25 C.F.R. § 20.1(r). *See also, Twelfth Report and Order*, 15 FCC Rcd at 12218-19.

⁹³ *Twelfth Report and Order*, stayed in part, Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 17112 (2000) ("*Tribal Stay Order*").

low telephone subscribership.⁹⁴ The Commission determined that giving low-income support to such broad areas may not further the goal of increasing telecommunications deployment and subscribership in the most historically isolated and underserved regions of the Nation.⁹⁵

Nevertheless, the Commission has made clear that, in certain circumstances, strict application of Section 54.400(e) may frustrate the public interest and the Commission's goal of increasing telephone penetration rates in unserved and underserved areas.⁹⁶ The Commission has identified a number of factors that are "primary impediments to subscribership on Tribal lands,"⁹⁷ including "the lack of access to and/or affordability of telecommunications services, the cost of basic service, the cost of intrastate toll service, inadequate telecommunications infrastructure and the cost of line extensions, and the lack of competitive service providers offering alternative technologies."⁹⁸ To the extent near-reservation lands can be shown to exhibit characteristics similar to reservation lands, a waiver of the stay on the provision of Enhanced Lifeline and Link Up may be warranted.

The record clearly demonstrates that the near-Reservation lands to be served by Sacred Wind have the same impediments to subscribership as the adjacent Reservation lands, and thus special circumstances exist to justify a waiver of the Commission's stay. Indeed, the instant situation is no different from, and perhaps worse than, the situation faced by Smith Bagley, Inc. in the same geographic area – the Eastern Agency of the Navajo Nation – where the Commission determined that a waiver of the stay was warranted. With respect to the near-Reservation lands

⁹⁴ *Id.* at 17113.

⁹⁵ *Id.* at 17114. The Commission currently has a pending rulemaking on how to identify geographic areas that are adjacent to reservations, consistent with the goal of targeting Enhanced Lifeline and Link Up to the most underserved areas of the nation. See *Twenty-Fifth Reconsideration Order*, 18 FCC Rcd at 10974-75.

⁹⁶ See generally *Smith Bagley* at ¶¶ 8-15.

⁹⁷ *Id.* at ¶ 10.

⁹⁸ *Id.*

to be served by Sacred Wind: (1) virtually all of the residents are Navajo Nation tribal members; (2) telephone penetration rates are far below the national average, and well below the penetration rates on Tribal lands nationwide; (3) per capita income is significantly below the national average, with a large portion of the residents at or below the federal poverty level; and (4) unemployment rates are high. Not surprisingly, since the area covered by the near-Reservation lands in *Smith Bagley* are substantially the same as those to be served by Sacred Wind, the economic conditions on the near-Reservation lands in *Smith Bagley* found to be deserving of a waiver are no different than in the instant case.⁹⁹

Other factors identified by the Commission in *Smith Bagley* as warranting a waiver of the stay are also evident here: (1) the cost of basic telephone service is high relative to the income of many of the families on the near-Reservation lands; (2) the population of the near-Reservation lands is sparse, and the great distances separating existing (and to-be-built) outside plant and this population make extending telecommunications facilities (particularly wireline) challenging, if not infeasible; and (3) depressed economic conditions of potential subscribers thus far have made it difficult to justify construction of telecommunications facilities because of customers' inability to pay for service – in fact, there are many areas of the near-Reservation lands where there is no telephone service at all.¹⁰⁰

Based on these factors, the Commission concluded in *Smith Bagley*, as it should here, that “specific action is needed to address the impediments to subscribership and infrastructure development in the [near-Reservation lands] to ensure affordable access to telecommunications

⁹⁹ See *id.* at ¶ 11. See also, Exhibit 2 (identifying the demarcation between the Reservation and near-Reservation lands in Sacred Wind's service territory).

¹⁰⁰ See *Smith Bagley* at ¶ 12.

services for residents.”¹⁰¹ The Commission found that “most of the factors that the Commission found relevant in establishing enhanced Lifeline and Link Up support exist[ed]” with respect to the near-Reservation lands in *Smith Bagley*.¹⁰² The Commission therefore concluded “that it is appropriate to waive Section 54.400(e) of the Commission’s rules and permit ETCs serving the [near-Reservation lands] to offer Tier 4 Lifeline and Link Up benefits to qualified residents.”¹⁰³

A waiver of the Commission’s stay will similarly serve the public interest here. Extending Enhanced Lifeline and Link Up to those customers on near-Reservation lands in Sacred Wind’s service territory will allow Sacred Wind to provide much-needed telecommunications services at rates that are likely to increase the number of subscribers who can afford basic telephone service. Making Enhanced Lifeline and Link Up support available will eliminate or diminish the effect of unaffordability for individuals in these near-Reservation lands who have never had telephone service and for individuals who cannot afford to maintain telephone service.¹⁰⁴ Making access to telecommunications services more affordable also serves the public interest because it enables these low-income consumers to have easier access to necessary emergency, medical, government and other public services.¹⁰⁵

Given the high cost of service and economic situation in Sacred Wind’s service area, the availability of Enhanced Lifeline and Link Up support to Sacred Wind’s customers residing on near-Reservation lands is essential to Sacred Wind’s goal of bringing affordable high-quality telecommunications services to this unserved and underserved area. Accordingly, Sacred Wind

¹⁰¹ *Id.* at ¶ 13.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See id.* at ¶ 14.

¹⁰⁵ *Id.*

respectfully requests a waiver of the Commission's stay of Section 54.400(e) as applied to residents of near-Reservation lands.

X. THE COMMISSION SHOULD GRANT ANY ADDITIONAL WAIVERS NECESSARY TO EFFECTUATE THE IMMEDIATE PROVISION OF BASIC AND ADVANCED TELECOMMUNICATIONS SERVICES TO THE NAVAJO PEOPLE.

To the extent any additional waivers are necessary to expedite Sacred Wind's immediate receipt of USF support and participation in the NECA pools and tariffs, Sacred Wind respectfully requests that such waivers be considered and granted on the Commission's own motion. Moreover, if some of the waivers requested herein will require substantially more time for review than others, Sacred Wind also asks that such waiver requests be severed and those requiring less time be ruled upon while review of the others is pending.

XI. CONCLUSION.

For the foregoing reasons, Sacred Wind respectfully requests that the Commission expeditiously review this Petition and grant the requested waivers herein. These waivers will serve the public interest by allowing Sacred Wind to provide high-quality basic and advanced telecommunications services to unserved and underserved areas of the Navajo Nation. Granting these waivers will also ensure administration of the USF in a manner consistent with the Commission's goal of assisting local exchange carriers serving high-cost rural areas and maintaining affordable local service rates and the public interest. As former Commissioner Rachelle Chong noted in her separate statement to the *First Universal Service Report and Order*: "If the Commission is to give true meaning to the words 'universal service,' . . . it must take a more pro-active role in helping to bring essential telephone service to insular areas at

subscribership rates comparable to the rest of the nation."¹⁰⁶ Granting the waivers sought in the instant petition will provide the Commission with the opportunity to do precisely that.

Respectfully submitted,

SACRED WIND COMMUNICATIONS, INC.

By: 

Martin L. Stern

Megan H. Troy

Scott C. Nelson

Preston Gates Ellis & Rouvelas Meeds LLP

1735 New York Avenue, NW, Suite 500

Washington, D.C. 20006

Phone: 202-628-1700

Fax: 202-331-1024

Counsel for Sacred Wind Communications, Inc.

QWEST CORPORATION

(as to Part III herein, only)

By: 

Craig Brown

Daphne Butler

Qwest Corporation

1801 California Street, Suite 1000

Denver, CO 80202

Phone: 303-383-6649

Fax: 303-896-1107

Counsel for Qwest Corporation

March 30, 2006

¹⁰⁶ First Universal Service Report and Order, Separate Statement of Commissioner Rachelle B. Chong, at 11.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March 2006, a copy of the foregoing Joint Petition was served by hand on each of the persons listed on the attached service list.


Sharon D. Agranov

SERVICE LIST

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Daniel Gonzalez
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Michelle Carey
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Jessica Rosenworcel
Office of Commissioner Michael J.
Copps
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Scott Bergmann
Office of Commissioner Jonathan
Adelstein
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Aaron Goldberger
Office of Commissioner Taylor Tate
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Thomas Navin, Chief
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Katie King
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Cathy Carpino
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Gary Siegel
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Best Copy Printing, Inc.
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554



NEW MEXICO PUBLIC REGULATION COMMISSION

COMMISSIONERS

DISTRICT 1 JASON MARKS, VICE-CHAIRMAN

DISTRICT 2 DAVID W. KING

DISTRICT 3 BEN R. LUJAN, CHAIRMAN

DISTRICT 4 LYNDIA M. LOVEJOY

DISTRICT 5 E. SHIRLEY BACA



1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, NM 87504-1269

Records Management Bureau
(505) 827-6940

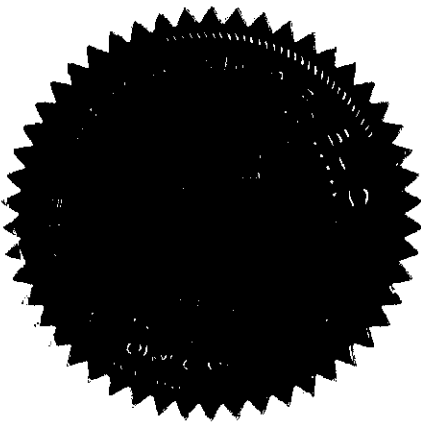
RECORDS MANAGEMENT BUREAU

CERTIFICATION

I, Ronald X. Montoya, Records Bureau Chief, hereby certify that the foregoing Final Order, Certificate of Service, Amended Recommended Decision of the Hearing Examiner and Letter pertaining to New Mexico Public Regulation Commission (NMPRC) Case No. 05-00272-UT are true and correct copies of the original documents filed with the Records Management Bureau of the NMPRC.

DATED this 23 day of March, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION




Ronald X. Montoya, Records Management Bureau Chief

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
SACRED WIND COMMUNICATIONS, INC.)
FOR CERTIFICATES OF FINANCIAL AND)
TECHNICAL COMPETENCY, OPERATING)
AUTHORITY, PUBLIC CONVENIENCE AND)
NECESSITY AND FOR DESIGNATION AS)
AN ELIGIBLE TELECOMMUNICATIONS)
CARRIER AND APPROVAL OF INITIAL)
TARIFFS,)

Case No. 05-00272-UT

SACRED WIND COMMUNICATIONS, INC.,)

Applicant.)

FINAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Amended Recommended Decision of the Hearing Examiner issued by Marilyn S. Hebert on March 9, 2006. The Commission, having considered the Recommended Decision and the record in this case, and being fully informed, adopts the following as its Final Order.

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over the parties and the subject matter of this case.
2. The Recommended Decision of the Hearing Examiner is well taken and should be adopted.
3. The Statement of the Case, Discussion, and all findings and conclusions contained in the Recommended Decision, attached hereto as Exhibit 1, are incorporated by reference as if fully set forth herein, and are ADOPTED, APPROVED, and ACCEPTED as Findings and Conclusions of the Commission

IT IS THEREFORE ORDERED:

A. The Orders contained in the Recommended Decision as set forth in Exhibit 1, attached hereto and incorporated by reference as if fully set forth herein, are ADOPTED, APPROVED, and ACCEPTED as Orders of the Commission.

B. The Recommended Decision is ADOPTED, APPROVED, and ACCEPTED in its entirety.

C. This Order is effective immediately.

D. A copy of this Order shall be mailed to all persons on the attached Certificate of Service.

E. This docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on March 21,

2006.

NEW MEXICO PUBLIC REGULATION COMMISSION


BEN R. LUJAN, CHAIRMAN


JASON MARKS, VICE CHAIRMAN

EXCUSED

DAVID W. KING, COMMISSIONER


LYNDA M. LOVEJOY, COMMISSIONER

EXCUSED

E. SHIRLEY BACA, COMMISSIONER

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
SACRED WIND COMMUNICATIONS, INC.)
FOR CERTIFICATES OF FINANCIAL AND)
TECHNICAL COMPETENCY, OPERATING)
AUTHORITY, PUBLIC CONVENIENCE AND)
NECESSITY AND FOR DESIGNATION AS)
AN ELIGIBLE TELECOMMUNICATIONS)
CARRIER AND APPROVAL OF INITIAL)
TARIFFS,)

SACRED WIND COMMUNICATIONS, INC.,)

Applicant.)

Case No. 05-00272-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order, issued March 21, 2006, was mailed first-class, postage prepaid, to each of the following:

Carol A. Clifford, Esq.
The Jones Firm
PO Box 2228
Santa Fe, NM 87504-2228

Thomas W. Olson, Esq.
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, NM 87504-2307

Brian Harris, Esq.
Assistant Attorney General
PO Drawer 1508
Santa Fe, NM 87504-1508

William P. Templeman, Esq.
Comeau, Maldegen, Templeman
& Indall, LLP
PO Box 669
Santa Fe, NM 87504-0669

and hand-delivered to:

Joan T. Ellis, Esq.
Staff Counsel
NM Public Regulation Commission
224 E. Palace Avenue
Santa Fe, NM 87501

DATED this 23rd day of March, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION



Alice Lucero, Paralegal

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
SACRED WIND COMMUNICATIONS, INC. FOR)
CERTIFICATES OF FINANCIAL AND TECHNICAL)
COMPETENCY, OPERATING AUTHORITY,)
PUBLIC CONVENIENCE AND NECESSITY AND)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER AND)
APPROVAL OF INITIAL TARIFFS)

Case No. 05-00272-UT

SACRED WIND COMMUNICATIONS, INC.,)

Applicant)

**AMENDED RECOMMENDED DECISION
OF THE HEARING EXAMINER**

Marilyn S. Hebert, Hearing Examiner for this case, submits this Recommended Decision to the New Mexico Public Regulation Commission ("NMPRC" or "Commission") pursuant to 17.1.2.32(E) NMAC and 17.1.2.39(B) NMAC. The Hearing Examiner recommends that the Commission adopt the following Statement of the Case and Discussion in its Final Order.

STATEMENT OF THE CASE

On July 1, 2005, Sacred Wind Communications, Inc. ("Sacred Wind" or "SWC") filed its Phase A Application for a Certificate of Financial and Technical Competency (confidential and redacted versions), in what it styled as the first of a two-part filing, together with the testimony of John W. Badal and Ben Romero. On October 28, 2005, SWC filed its Application for Certificate of Operating Authority, Public Convenience and Necessity and Designation as an Eligible Telecommunications Carrier and Related Approvals Phase B (confidential and

redacted versions), in what SWC styled as the second in a three-part filing,¹ together with the testimony of the following: Gil Arviso; Calvert Garcia; Charles Hedelius; David P. Aspenson; and Messrs. Badal and Romero. The Phase A application and the Phase B application are hereinafter referred to, collectively, as the "Applications."

On October 31, 2005, Qwest Corporation ("Qwest") filed a Notice of Proposed Discontinuance of Service stating that it proposes to discontinue local exchange service to certain subscribers as a result of the sale to SWC of approximately 1,970 residential lines, 274 business lines and 72 public telephone lines. Qwest asked that the Commission consolidate the notice into a single case with SWC's Applications.

On November 3, 2005, the Commission issued its Order Designating Hearing Examiner and Setting Procedural Schedules ("Order") designating Marilyn S. Hebert to preside over this matter and setting a hearing for January 11, 2006. The Order states that SWC seeks authorization from the Commission to provide intrastate rural telecommunications services within and around the Navajo Nation, currently served by Qwest, and within the Rincon Marquez community. The Order also directs the Hearing Examiner to consolidate consideration of the Applications, Phases A and B, and Qwest's Notice of Proposed Discontinuance of Service. Additionally, the Commission ordered SWC to publish the Order in newspapers of general circulation in Gallup and

¹ Applications, Phase B at 2 states: "Sacred Wind anticipates in the coming months a third proceeding where the Company will ask the Commission to authorize the transfer or other beneficial use by SWC of certain monies in Qwest's Rural Exchange Fund to benefit SWC's operations."